



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NPL

Five Year Reviews

DEC 29 1989

OSWER Directive 9320.2-3B

HAZARDOUS WASTE BRANCH**MEMORANDUM****INFORMATION FILE COPY**OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

SUBJECT: Update to the "Procedures for Completion and Deletion of National Priorities List Sites" Guidance Document Regarding the Performance of Five-Year Reviews (Superfund Management Review: Recommendation No. 2)

FROM: Henry L. Longest II, Director
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TO: Director, Waste Management Division
Regions I, IV, V, VII, and VIII
Director, Emergency and Remedial Response Division
Region II
Director, Hazardous Waste Management Division
Regions III, VI, and IX
Director, Hazardous Waste Division
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PURPOSE

This memorandum incorporates into the "Procedures for Completion and Deletion of National Priorities List Sites" guidance document (OSWER Directive 9320.2-3A) EPA's policy to conduct at least one Five-Year Review prior to deleting sites from the National Priorities List (NPL). This memorandum: (1) implements Recommendation No. 2 contained in the Administrator's Management Review; (2) is a necessary follow-up to the October 30, 1989 Jonathan Cannon, Acting Assistant Administrator, policy directive to EPA Regional Administrators which explains which sites will require five-year reviews, and how the policy will affect deletions; and (3) identifies how EPA will administratively amend the deletion process to account for this policy directive.

BACKGROUND

On October 30, 1989, the Acting Assistant Administrator for the Office of Solid Waste and Emergency Response (OSWER) issued a policy directive concerning the performance of CERCLA 121(c) Five-year reviews and the relationship of such reviews to the deletion of sites from the NPL. This policy directive noted that EPA will ensure that five-year reviews are conducted for all remedial actions which result in hazardous substances, pollutants, or

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contaminants remaining at the site above levels that allow for unlimited use and unrestricted exposure. This means that EPA will conduct reviews of a remedial action unless the site has been cleaned to at least health-protective levels and such levels allow for unlimited use and unrestricted exposure. Consequently, EPA will conduct five-year reviews of all remedies requiring any access or land-use restrictions or control, including remedies that attain health-protective levels for the current use, but which include restrictions on activities due to limits on exposure. Reviews will begin no more than five years after the initiation of a remedial action. The directive set out the policy that a site subject to five-year reviews should generally not be deleted from the NPL until at least one such review has been conducted following completion of all remedial actions at a site (except operation and maintenance).

Although SARA provides that CERCLA Section 121 (including 121 (c)) applies only to actions resulting from RODs signed post-SARA, the policy directive also notes that EPA believes as a matter of policy that it would be inappropriate to distinguish between pre- and post-SARA RODs in determining whether to conduct five-year reviews. Furthermore, also as a matter of policy, EPA will examine previously deleted sites to assess the appropriateness of conducting five-year reviews for those remedial actions which result in hazardous substances, pollutants, or contaminants remaining above levels that allow for unlimited use and unrestricted exposure. The purpose of such an examination would be to determine whether such remedies remain protective.

EPA is also currently developing guidance on the nature and extent of five-year reviews. EPA will revise and reissue the guidance on deletion/completion of NPL sites upon the issuance of the guidance on five-year reviews, which is expected in 1990.

IMPLEMENTATION

The following update of the April 1989 OSWER Directive 9320.2-3A, "Procedures for Completion and Deletion of NPL Sites", provides the administrative requirements which should be followed prior to deletion of sites from the NPL as a result of EPA's October 30, 1989 Five-Year Review policy directive. Effective immediately, these procedures should be followed for all sites affected by the Five-Year Review policy. Any questions regarding the attached update may be directed to Ed Hanlon of OSWER's Hazardous Site Control Division (HSCD) at FTS: 475-9753. Until the completion/deletion guidance is fully revised and reissued, please contact Allen Dotson, HSCD, at FTS: 382-5755, to determine the current policy on five-year reviews.

Attachment

CC: Regional Superfund Branch Chiefs
Offices of Regional Counsel - Regional Branch Chiefs

Attachment

12/29/89 Amendment to the April 1989 OSWER Directive 9320.2-3A,
"Procedures for Completion and Deletion of
National Priorities List Sites (NPL)"

1. Disclaimer, "Notice." Amendment:

- a) Page ii. Add the following as the second paragraph:

"The policies set out in this memorandum are intended solely for the guidance of Government personnel. They are not intended, nor can they be relied upon, to create any rights enforceable by any party in litigation with the United States. EPA officials may decide to follow the guidance provided in this memorandum, or to act at variance with the guidance, based on an analysis of specific site circumstances. The Agency also reserves the right to change this guidance at any time without public notice."

2. Chapter 1, "Introduction." Amendment:

- a) Page 2. Add the following as the fifth paragraph under Introduction:

"EPA will ensure that five-year reviews are conducted at all sites at which a selected remedial action results in hazardous substances, pollutants, or contaminants remaining at a site above levels that allow for unlimited use and unrestricted exposure. EPA will generally not delete a site for which five-year reviews are required until one such review has been conducted following completion of all remedial actions at a site (except operation and maintenance). EPA Headquarters also intends to revise and reissue this guidance (OSWER Directive 9320.2-3A, as amended December 29, 1989) when the final policy on when and how to conduct five-year reviews is released. Until the reissuance of this completion/deletion guidance, EPA Regions should consult with EPA Headquarter's Hazardous Site Control Division to determine when and how the five-year reviews should be considered and conducted."

3. Chapter 2, "Site Completion." Amendments:

- a) Page 3. Add the following as the second paragraph under the sub-heading: "Final Operable Unit Remedial Actions":

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"For Fund-financed remedial actions, the lead and support agencies should conduct a joint inspection at the conclusion of construction of the remedial action and concur through a joint memorandum that (a) the remedy has been constructed in accordance with the ROD and with the remedial design, and (b) a period for evaluating the operation of the remedy commences at that time, and should continue until the completion of any activities necessary to ensure that the remedy is fully operational and functional. Once the remedy is considered operational and functional by the party contracting for construction, a Remedial Action Report should be prepared by the party contracting for construction to officially provide its assurance that the work was performed within desired specifications, and is considered operational and functional. The lead and support agencies should then conduct a joint inspection and execute a joint memorandum accepting the Remedial Action Report."

- b) Page 3. Change the second sentence under the subheading "No Action Sites" as follows:

"It does not include sites with RODs requiring only monitoring or institutional controls; these types of sites will be considered "Limited Action Sites" which will require five-year reviews to ensure protection of human health and the environment".

- c) Page 3. Add the following to the third sentence under the subheading "No Action Sites":

"...have been addressed (e.g., O&M assurances, need for five-year reviews, and institutional controls)."

- d) Page 5. The following new text will supersede the old text of the "LTRA Sites" subsection:

"Long Term Response Action (LTRA) Sites

An "Interim Close Out Report for LTRA Sites", prepared by the Region and approved by the RA, will be required of all LTRA sites. This report will contain final information for all completed operable units at the site and describe the LTRA activities to be performed, the cleanup levels to be achieved for the LTRA portion of the site, and any five-year review responsibilities (as discussed in the next section). This report will act as the determining factor for designating sites as LTRAs on the NPL and for internal Superfund tracking. In addition, once a ground or surface water restoration LTRA operable unit is operating

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as designed, States may assume responsibility for operation of the LTRA.

The "Interim Close Out Report for LTRA Sites" will be amended when cleanup levels are achieved to include final information for the LTRA operable units of the site in order to satisfy completion requirements. The "Interim Close Out Report for LTRA Sites" and the amendment together will constitute the final Close Out Report for the site. The LTRA site will then be recategorized on the NPL as either a "Site Awaiting Deletion" or a "Five-Year Review Site"

- e) Page 5. The following new text will be added as a separate subsection after the "LTRA Sites" subsection:

"Five-Year Review Sites

An "Interim Close Out Report for Five-Year Review Sites", prepared by the Region and approved by the RA, will be required of all Five-Year Review sites (this may incorporate by reference interim or final Close Out Reports already prepared). This report will contain final information for all completed operable units at the site and describe the Five-Year Review activities to be performed. This report will also act as the determining factor for designating sites as Five-Year Review sites on the NPL and for internal Superfund tracking. This report will be amended when at least one five-year review has been conducted following the completion of the remedial action (except operation and maintenance), and any appropriate actions have been taken to ensure that the site remains protective of human health and the environment. The "Interim Close Out Report for Five-Year Review Sites", and the amendment, together will constitute the final Close Out Report for the site. States may conduct five-year reviews under/pursuant to Cooperative Agreements or Superfund State Contracts with EPA, and submit five-year review reports to EPA.

For LTRA's such as bioremediation, flushing, and groundwater pump and treat where health-based levels may not be achieved on site for an extended period of time during and/or after site remediation, EPA will conduct five-year reviews from the date on which the first contract is awarded for work to install, construct, or implement the LTRA operable unit. Even at sites that are expected to achieve health-based levels at the completion of remedial action, EPA will, as a matter of policy, assure the conduct of five-year reviews when the remedial action will require more than five years to complete.

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An Interim Close Out Report for Five Year Review Sites would be required, for example, for a landfill closure site which is not an LTRA site. However, one Interim Close Out Report may be prepared for those sites which are designated both as an LTRA as well as a five-year review site. In these cases, the Interim Close Out Report will be amended twice, as follows: (a) when at least one five-year review has been conducted following the completion of the remedial action (except operation and maintenance), and any appropriate actions have been taken to ensure that the site remains protective of human health and the environment; and (b) when the LTRA cleanup levels are achieved, to include final information for the LTRA operable units of the site in order to satisfy completion requirements."

4. Chapter 3, "The Close Out Report," Amendments:

- a) Page 7. Add the following separate category (as component 6) to the listed components which are necessary to be addressed in the Close Out Report:
 - "6) Five-Year Review
 - o Statement explaining: (a) that at least one five-year review has been conducted following completion of all remedial actions at the site (except operation and maintenance), and that any appropriate actions have been taken to ensure that the site remains protective of human health and the environment; or (b) why no five-year review was required. (EPA Headquarters will revise and reissue this completion/deletion guidance when the final policy on when and how to conduct five-year reviews is released. Until the reissuance of this guidance, EPA Regions should consult with EPA Headquarter's Hazardous Site Control Division to identify when and how the five-year reviews should be considered and conducted.)
 - o Assurance that, where appropriate, an acceptable and detailed workplan is in place for the performance of future five-year reviews, and is sufficient to determine whether the protectiveness of the remedy(s) for each operable unit, and of the site as a whole, is maintained. (A five-year review workplan may be incorporated into the operation and maintenance assurance agreements and workplans.)

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- b) Page 8, Exhibit 2. Add the following item to the "Contribution to Close-Out Report" section across from the "Remedial Action" cleanup activity:

"o Five-year review plan, where appropriate"

5. Chapter 4. "NPL Deletion Criteria." Amendment:

- a) Page 10. Add the following paragraphs after the third deletion criteria:

"In addition to the above, for all remedial actions which result in hazardous substances, pollutants, or contaminants remaining at the site above levels that allow for unlimited use and unrestricted exposure, it is EPA's policy that sites should generally not be deleted from the NPL until at least one five-year review has been conducted following completion of all remedial actions at a site (except operation and maintenance), any appropriate actions have been taken to ensure that the site remains protective of public health and the environment, and the site meets EPA's deletion criteria as outlined above. EPA must also assure that five-year reviews will continue to be conducted at the site until no hazardous substances, pollutants, or contaminants remain above levels that allow for unlimited use and unrestricted exposure. States may conduct five-year reviews under/pursuant to Cooperative Agreements or Superfund State Contracts with EPA, and submit five-year review reports to EPA.

An exception to this requirement involves situations where a Consent Decree contained language specifically committing EPA to delete a site from the NPL upon completion of certain response activities. In such cases, EPA Regions must consult with EPA Headquarters prior to initiation of any deletion activities. However, such an exception would apply only to the general policy of not deleting sites before completion of the first five-year review, not to the requirement to conduct reviews. EPA would still need to assure that five-year reviews will be conducted at the site. Given the October 30, 1989 policy directive from the Acting Assistant Administrator for OSWER regarding the performance of five-year reviews and their relationship to the deletion process, Consent Decrees should now require one five-year review following the completion of the remedial action (except operation and maintenance) before deletion."

6. Chapter 5. "The Deletion Process." Amendments:

- a) Page 10. Revise the first sentence of the first paragraph as follows:

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"The deletion process may begin after approval of the Close Out Report by the RA, and after RA and/or the state's approval of at least one five-year review at those sites which require five-year reviews."

- b) Page 11, Exhibit 3. Add the following step immediately under the "Approved Close Out Report" step:

"Where Appropriate, Conduct At Least One Five-Year Review"

- c) Page 12. Add the following immediately under "Close Out Report" in the suggested list of documents for the deletion docket:

"Initial Five-Year Review report, where appropriate"

- d) Page 13. Add the following separate bullet item to the "Supplementary Information: Item IV - Basis for Intended Site Deletion(s)" section, immediately under the description of O&M procedures:

"Description of the results of the initial five-year review, where appropriate, as well as reasoning for the need for future five-year reviews, and plans for performance of such reviews, in accordance with EPA's requirements for protectiveness at the time of each future review."

7. Appendix A. "Completion Process Diagrams," Amendment:

- a) Pages A-1 through A-4. Add the following immediately above the "NPL Deletion" item in the "Completion Scenario" charts for Remedial Sites, LTRA Sites, No Action Sites, and Removal Sites:

"Where Appropriate, Conduct At Least One Five-Year Review"

8. Appendix B. "Sample Close Out Report," Amendment:

- a) Page B-6. Add the following separate chapter, as the new Chapter V, prior to the "PROTECTIVENESS" Chapter, to provide a summary of the Five-Year Review which, if appropriate, was conducted, and what actions, if any, were taken as a result of that Review, as follows:

"V. SUMMARY OF FIVE YEAR REVIEW STATUS

Consistent with the requirements of the October 30, 1989 policy directive from the Acting Assistant Administrator for OSWER which describes EPA's general policy of not deleting sites before completion of the

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first five year review following completion of all remedial actions at a site (except operation and maintenance), a five year review was completed and signed by the EPA Region IX Office on _____. Based on the findings of this five year review, EPA and the State of California have determined that all remedial actions conducted at the site remain protective of public health, welfare, and the environment.

EPA Region IX entered into a Superfund State Contract with the State of California on _____ to assure the performance of future five-year reviews at this site by the State. An acceptable and detailed workplan is in place for the performance of future five-year reviews. This workplan has been incorporated into the operation and maintenance plan already in place. If necessary, it will be revised at the time of each five-year review."

9. Appendix C. "Sample Notice of Intent To Delete." Amendments:

- a) Page C-3. Add the following paragraphs after the third deletion criteria under Chapter II:

"In addition to the above, for all remedial actions which result in hazardous substances, pollutants, or contaminants remaining at the site above levels that allow for unlimited use and unrestricted exposure, it is EPA's policy that sites should generally not be deleted from the NPL until at least one five-year review has been conducted following completion of all remedial actions at a site (except operation and maintenance), any appropriate actions have been taken to ensure that the site remains protective of public health and the environment, and the site meets EPA's deletion criteria as outlined above. EPA must also assure that five-year reviews will continue to be conducted at the site until no hazardous substances, pollutants, or contaminants remain above levels that allow for unlimited use and unrestricted exposure. States may conduct five-year reviews under/pursuant to Cooperative Agreements or Superfund State Contracts with EPA, and submit five-year review reports to EPA.

An exception to this requirement involves situations where a Consent Decree contained language specifically committing EPA to delete a site from the NPL upon completion of certain response activities. In such cases, EPA Regions must consult with EPA Headquarters prior to initiation of any deletion activities. However, such an exception would apply only to the general policy of not deleting sites before completion of the first five-year review, not to the requirement to conduct

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reviews. EPA would still need to assure that five-year reviews will be conducted at the site. Given the October 30, 1989 policy directive from the Acting Assistant Administrator for OSWER regarding the performance of five-year reviews and their relationship to the deletion process, Consent Decrees should now require one five-year review following completion of the remedial action (except operation and maintenance) before deletion."

- b) Page C-3. Add the following as the new procedure 1. under Chapter III:

"1. EPA Region II entered into a Superfund State Contract with the State of New Jersey to conduct five-year reviews at this site. New Jersey conducted the first five-year review on _____. EPA and the State find that the remedy continues to provide adequate protection of human health and the environment.

- c) Page C-5. Add the following after the sentence beginning with "A five year..." in the paragraph beginning with "The institutional controls...", and delete the existing last sentence which begins "That Program...":

"EPA Region II entered into a Superfund State Contract with the State of New Jersey to conduct five-year reviews at this site. New Jersey conducted the first five-year review on _____. EPA and the State find that the remedy continues to provide adequate protection of human health and the environment.

An acceptable and detailed workplan is in place for the performance of future five-year reviews. This workplan has been incorporated into the operation and maintenance plan already in place, and has been sufficiently prepared to allow the EPA and the State of New Jersey to determine whether the protectiveness of the remedy for the site will be maintained over time. If necessary, it will be revised at the time of each five-year review."

10. Appendix B. "Sample Notice of Deletion." Amendment:

- a) Page E-1. Change the last sentence of the SUMMARY section as follows:

"Moreover, EPA and the State of _____ have determined that remedial actions conducted at the site to date remain protective of public health, welfare, and the environment."